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DE RUEHML #0465/01 0400830
ZNR UUUUU ZZH
O 090830Z FEB 07
FM AMEMBASSY MANILA
TO RUEHC/SECSTATE WASHDC IMMEDIATE 5146
INFO RUEHZS/ASEAN COLLECTIVE IMMEDIATE
RUEKJCS/SECDEF WASHDC IMMEDIATE
RHHMUNA/CDR USPACOM HONOLULU HI IMMEDIATE
RHEHNSC/NSC WASHDC

UNCLAS SECTION 01 OF 02 MANILA 000465

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E.O. 12958: N/A

TAGS: PTER PREL KCRM RP

SUBJECT: NEAR PASSAGE OF MAJOR COUNTER-TERRORISM LEGISLATION

¶1. (U) Summary. Passage of long-awaited counterterrorism legislation moved closer to adoption with the approval on February 8 by a bicameral committee of an agreed-upon version. The lower House will have to vote on it when Congress resumes in June, and the President, who expressed delight at this development, is expected to sign it into law. The bill would significantly improve the Philippine government's arsenal of tools against terrorists - notably, modernized electronic surveillance provisions - and provide stiff penalties, while providing numerous human rights protections but its eventual enforcement likely will face problems. End Summary.

¶2. (U) In a surprising move, a bicameral committee of the two Houses of Congress on February 8 adopted in full the version of a counterterrorism bill that the Senate had approved only on February 7 after years of deliberation. (The House had passed a very different version in April 2006.) Despite efforts by House Speaker Jose de Venecia, on behalf of the government, to bring the bicameral version to a vote of approval by the lower house on the same evening, a lack of quorum prevented its final adoption before Congress adjourned for the beginning of the May 14 campaign season. Congress will resume on June 4. Congressional and government sources predict that the lower House will quickly approve the bicameral bill and send the new law to President Gloria Macapagal Arroyo for signature. The Philippine government had long certified this as "priority" legislation.

New tools

¶3. (U) The 62-section, 49 page legislation -- now entitled the "Human Security Act of 2007" -- has many notable new tools to aid in Philippine counterterrorism efforts, including:
-- creation of an Anti-Terrorism Council (ATC) to replace the current Anti-Terrorism Task Force; its members will be the Executive Secretary, the National Security Advisor, and the Secretaries of

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Foreign Affairs, Justice, National Defense, Finance, and the Interior and Local Government. The National Intelligence Coordinating Agency will act as the Secretariat;
-- authorization of electronic surveillance upon a written order of the Court of Appeals upon the request of the ATC (updating the long-outdated Anti-Wiretapping Act of 1965);
-- authorization to examine bank deposits, accounts, and records, upon written orders from the Court of Appeals upon request from the ATC;
-- seizure and sequestration of assets of terrorist suspects;
-- use of continuous trials on a daily basis to ensure speedy trial in terrorism cases;

Protections

¶4. (U) To satisfy long-standing human rights concerns expressed in both Houses, the draft legislation also has many significant

protections, including:

- an affirmation that the "exercise of the constitutionally recognized powers of the executive department of the government shall not prejudice respect for human rights which shall be absolute and protected at all times;"
- communications between lawyers and clients, doctors and patients, journalists and their sources and confidential business correspondence will not be subject to electronic or other surveillance;
- Court of Appeal orders for electronic surveillance are only valid for thirty days, subject to only one additional thirty day extension;
- if, during this period, no case is filed, police must notify the subject;
- officials may not "delete, expunge, incinerate, shred, or destroy" records based on electronic surveillance or bank records;
- suspects may be held only for three days (reduced from 15 days in earlier drafts) without being charged;
- before detention, law enforcement officials must present a suspect to a judge to verify that the suspect has not been "subjected to any physical, moral, or psychological torture;"
- detainees must be informed of the nature and cause of arrest, and retain rights to remain silent and to have competent and independent counsel, preferably of their choice;
- the government must ensure free legal assistance if the detainees cannot afford to hire counsel;
- an absolute ban on torture or coercion in investigation and interrogation, with any testimony that results from such practices "absolutely not admissible and usable as evidence;"
- government must pay damages of 500,000 pesos per day that suspects have been "detained or deprived of liberty or arrested without a warrant," if acquitted;
- government must pay damages of 500,000 pesos per day if assets were seized if acquitted or if charges are dismissed;
- the requirement of proof of "probable cause" before examination of bank records;

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-- the Commission on Human Rights shall give "highest priority" to investigate possible violations of civil and political rights in the implementation of this act, and to prosecute responsible public officials and law enforcers.

Definitions

¶5. (U) After years of debate, the two Houses have agreed on a definition of terrorism that cites violations of relevant articles of the Revised Penal Code and related Presidential Decrees and other laws in order to sow and create a "condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand."

¶6. (U) The legislation also clarifies that, while crimes under this act are primarily related to those committed within the territorial "domain, interior waters, maritime zone, and airspace of the Philippines," it will also apply to acts:

- planned by persons physically outside the territorial limits of the Philippines in order to take place inside the territorial limits or on board Philippine ships or aircraft;
- committed within Philippine Embassies, consulates, or other diplomatic premises;
- committed against Philippine citizens or persons of Philippine descent even outside the Philippines, when their citizenship or ethnicity was a factor;
- committed directly against the Philippine government even if outside the Philippines.

Penalties

¶7. (U) Those found guilty under the act for commission of an act of terrorism are subject to 40 years imprisonment, without parole. Conspirators are also subject to 40 years imprisonment, but with the possibility of parole. Those who merely cooperate in the commission or conspiracy of terrorism are subject to 17-20 years imprisonment.

Accessories - excluding spouses, parents, children, siblings, or other close relatives - may be subject to 10-12 years imprisonment.

¶18. (U) Officials who subject suspects to torture in any form will face penalties of 12-20 years imprisonment. Officials who allow those convicted under this act to escape will face penalties of between 12-20 years imprisonment, or 6-12 years for escapes by detainees.

Reviews

¶19. (U) The two Houses will appoint five members each to a Joint Oversight Committee, which will provide semi-annual reports to both Houses. Courts dealing with terrorism cases must report every six months to Congress and the President on the status of cases.

President's reaction

¶10. (U) President Arroyo described the vote of the bicameral conference as "an institutional landmark of the 13th Congress at a time when the world looks upon the Philippines as a strong global player in the fight against terror." She added that "all peace-loving Filipinos are looking forward to its quick approval ... and I will wait for it, pen in hand, at my desk." She commented that, as "we have more legal teeth in this fight, we shall continue to sharpen the intelligence and operational capabilities of the Armed Forces and the Philippine National Police (PNP), modernize and further professionalize them, and broaden the domestic and international alliances that will give us the edge to win and prevail."

Comment

¶11. (U) While Congress has not yet formally enacted this Act into law, this dramatic development brings the Philippines very close to a long-desired goal of adopting more effective counterterrorism legislation, with the likelihood of formal adoption in June. Emboffs will meet with legislators and relevant law enforcement officials over the next weeks to seek their views on the effectiveness - and challenges - of these draft provisions. Notably missing is the ability of law enforcers to access telephone records through pen registers and trap-and-trace mechanisms, a feature that was present in most earlier drafts. Like many good pieces of legislation in the Philippines, enforcement will likely prove problematic. The specter of compensation in arrest cases that do not result in conviction may be particularly discouraging to law enforcement authorities, whose budgets would be directly affected.

KENNEY